YAVAPAL COUNTY, ARIZONA

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF ARIZONA COUNTY OF YAVAPAI

JOHN B. CUNDIFF and BARBARA C.) CUNDIFF, husband and wife; BECKY NASH,) a married woman dealing with her separate) property; KENNETH PAGE and KATHRYN) PAGE, as Trustee of the Kenneth Page and Kathryn Page Trust,

Plaintiffs,

VS.

DONALD COX and **CATHERINE COX**, husband and wife,

Defendants.

Case No. CV 2003-0399

Division 1

PLAINTIFFS' MOTION FOR CLARIFICATION RE: ADVISORY JURY

Plaintiffs, John and Barbara Cundiff, Becky Nash, and, Kenneth and Kathryn Page, hereby request that the Court clarify that the jury to be empaneled in the trial in this matter is an advisory jury because Plaintiffs' have sought injunctive relief, an equitable remedy solely within the Court's discretion.

The Arizona court of appeals, in a case involving the enforcement of restrictive covenants, has held that the grant or denial of injunctive relief "rests within the sound discretion of the trial court," as does a claim for attorney's fees. Ahwatukee Custom Estates Management Assoc. Inc. v. Turner, 196 Ariz. 631, 634, 2 P.3d 1276, 1279 (App. Div. 1 2000). Consequently, where equitable remedies are sought, it is for the Court "to structure the remedy so as to promote equity between the parties." Id. at 635, 2 P.3d 1280.

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Therefore, Plaintiffs request that this Court clarify and confirm that the jury in the trial of this 1 matter will be an advisory jury to the Court. Consequently, any findings of fact by the jury are not 2 binding on the Court and it is solely within this Court's discretion to grant or deny Plaintiffs' request 3 4 for equitable relief. DATED this 22nd day of July, 2005. 5 6 7 8 9 10 Original of the foregoing filed this 22nd day of July, 2005 with: 11 12 Clerk, Superior Court of Arizona Yavapai County 13 120 S. Cortez Street Prescott, Arizona 86302 14 15 A copy of the foregoing hand-delivered this 22nd 16 day of July, 2005, to: 17 Honorable David L. Mackey **Division One** 18 Superior Court of Arizona Yavapai County 120 S. Cortez Street 19 Prescott, Arizona 86302 20 and, a copy mailed this 22nd day of July, 2005, to: 21 22 Mark Drutz Jeffrey Adams MUSGROVE, DRUTZ & KACK, P.C. 1135 Iron Springs Road 23 24 Prescott, Arizona 86302 Attorneys for Defendants Cox 25

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